IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re BRAC GROUP, INC. (f/k/a Budget Group, Inc.), et al., Debtors.	Chapter 11 Case No. 02-12152 (MFW) (Jointly Administered)
BRAC GROUP, INC. (f/k/a Budget Group, Inc.), et al., Plaintiffs and Counterclaim Defendants, v. Jaeban (U.K.) Limited, Defendant and Counterclaim Plaintiff.	03-A-54271

PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S COUNTERCLAIMS DUE TO DEFENDANT'S REFUSAL TO PARTICIPATE IN THIS PROCEEDING

Plaintiffs, including Debtor Budget Rent-A-Car International, Inc. ("BRACII"), by their undersigned attorneys, hereby respectfully request that the Court strike Defendant's Answer, Affirmative Defenses and Counterclaims in order to release from escrow the $4,500,000 of Plaintiffs' funds held hostage by misconduct of Defendant Jaeban (U.K.) Limited ("Jaeban") in failing to obtain Delaware counsel, comply with the Court's scheduling order, or advance this proceeding.[1] In support of their Motion, Plaintiffs state as follows:

[1] Due to Jaeban's pervasive refusal to participate in this adversary proceeding, Plaintiffs bring this Motion under the following: Fed. R. Civ. P. 16(f), 37(b)(2)(C), and 41(b); D. Del. R. 1.3(a), 1.3(b), and 85.3(d); Bankr. D. Del. R.

INTRODUCTION

The Adversary Proceeding and Jaeban's Receivership[2]

1. Plaintiffs filed this action on July 9, 2003 to recover at least £3,006,090 owed by Jaeban (U.K.) Limited ("Jaeban") to Budget Rent A Car International, Inc. ("BRACII"), an amount shown as due and owing on BRACII's books and records. At all relevant times, Jaeban was a BRACII licensee headquartered near Birmingham, England.

2. On August 22, 2003, Jaeban voluntarily submitted to the jurisdiction of this Court by answering the Complaint and asserting counterclaims.[3] Thomas Briggs, Esq. and the Wilmington, Delaware firm of Morris, Nichols, Arsht & Tunnell ("Mor Nichols") filed an appearance on behalf of Jaeban.

3. On September 23, 2003, BRACII and Plaintiff-Intervenor Official Committee of Unsecured Creditors filed an Answer denying Jaeban's counterclaims in all material respects.

4. On October 20, 2003, Jaeban went into receivership in England. John Whitfield and Gerald Smith (the "Jaeban Receivers") were appointed as administrative receivers in a nonjudicial receivership under the Insolvency Act 1986 by Jaeban's secured creditor, Close Invoice Finance Limited.

1001-1(b) and 9010-1(a); 11 U.S.C. § Section 105(a); and the provisions of the February 26, 2003 Order (the "Avis Sale Order") approving the sale of certain assets of BRAC Rent-A-Car Corporation and BRACII to Avis Europe plc.

[2] Unless otherwise noted, the facts stated in this Motion have been adopted from Plaintiffs' Motion for Partial Summary Judgment and exhibits, which set forth the basis for these assertions.

[3] Jaeban, through its principal, I.M. Jaeban, had previously expressed its desire to participate in the cure process established in connection with the Avis Sale Order. Mr. Jaeban's February 19, 2003 fax to counsel seeking to have Jaeban's claims "dealt with through the Cure Process" is attached *infra* as Exhibit A.

5. Following the appointment of the Jaeban Receivers, Plaintiffs agreed to allow Jaeban a two-week period until November 3, 2003 to consider its position in this proceeding without having to participate in discovery.

Jaeban's Failure to Prosecute: Refusal to Retain U.S. Counsel

6. Between November 3, 2003 and December 17, 2003, on three occasions, Plaintiffs' counsel asked Mr. Briggs of Morris, Nichols whether he and his firm would continue to represent Jaeban in this proceeding. Affidavit of Kenneth E. Wile, ¶ 2.[4]

7. On December 17, 2003, during a telephonic hearing, the Court directed Jaeban's English solicitors from Wragge & Co. and Delaware counsel from Morris Nichols to resolve the identity of Jaeban's Delaware counsel.

8. Jaeban never complied with that direction. Instead, on January 7, 2004, Morris Nichols moved to withdraw from its representation of Defendant due to Jaeban's non-payment of the firm's fees.[5]

9. The Court considered Morris Nichols' Motion to Withdraw at a hearing on January 12, 2004. Jaeban's solicitors at Wragge & Co. did not to participate in this hearing by telephone, although they were invited to do so by Plaintiffs' counsel. *See* Wile Aff., ¶ 3.

10. During the hearing, Thomas Briggs of Morris Nichols stated to the Court that the Jaeban Receivers and their counsel had repeatedly refused to return Mr. Briggs' phone calls regarding payment of fees and retention of new counsel.[6] At the hearing, the Court granted

[4] A copy of Mr. Wile's Affidavit is attached as Exhibit B.
[5] A copy of the Morris Nichols Motion to Withdraw is attached as Exhibit C.
[6] January 12, 2004 Hearing Transcript at 35. A copy of the transcript is attached as Exhibit D

the motion to withdraw and determined that Jaeban had not arranged for substitute counsel to be present in the courtroom.

11. In discussing Plaintiffs' Motion for Partial Summary Judgment, the Court ordered that "substitute counsel has to be obtained in time to file the response [to the Motion] by the 30th" – i.e., by January 30, 2004. Ex D at p. 36.

12. In violation of the Court's Order, Jaeban has not retained new Delaware counsel and did not file a response by January 30, 2004 to Plaintiffs' Motion.

Jaeban's Refusal to Provide Witnesses and Documents

13. On December 17, 2003, the Court granted Plaintiffs' Motion to revise the Scheduling Order in this adversary proceeding. The revised Order directed that all fact discovery be completed by January 30, 2004. Jaeban has never sought an extension of this date – an extension that Plaintiffs would vigorously oppose.

14. Since December 17th, Jaeban has disregarded the Court-ordered January 30, 2004 discovery cutoff. In particular, Jaeban has failed to:

a. Provide any documents in response to Plaintiffs' Second Requests for Production of Documents (served on November 26, 2003);

b. Respond to concerns raised by Plaintiffs in a letter dated December 12, 2003 regarding apparent gaps in Jaeban's November production of documents;[7] and

c. Schedule depositions of any Jaeban personnel and the Jaeban Receivers, despite the repeated requests of Plaintiffs' counsel and Plaintiffs' offer to hold the depositions in London. *See* Ex. E.

Wile Aff., ¶ 4.

[7] A copy of Mr. Wile's December 12, 2003 letter is attached as Exhibit E.

15. In disregarding the discovery cutoff, Jaeban was fully aware of its obligations to Plaintiffs. On December 30, 2003, Jaeban's prior Delaware counsel, Thomas Briggs, wrote Plaintiffs' counsel *promising* to produce documents in response to Plaintiffs' Second Requests for Production of Documents during the week of January 5, 2004 and "hoping" to provide Plaintiffs with deposition dates and a response to Plaintiffs' concerns about the prior document production during that same week.[8] Mr. Wile and Mr. Briggs had repeatedly discussed the scheduling of depositions in England since October 2003. Wile Aff., ¶ 8.

16. As noted, Jaeban failed to honor any of the undertakings set forth in Mr. Briggs's letter and instead forced Mr. Briggs and his firm to withdraw.

17. Following the withdrawal of Jaeban's Delaware counsel on January 12, 2004, Plaintiffs' counsel faxed a letter on January 14, 2004 to Mr. Weatherall, Jaeban's Birmingham solicitor urging Jaeban to retain new Delaware counsel as soon as possible and provide the promised witnesses and documents in advance of the January 30, 2004 fact discovery cutoff.[9] The letter informed Mr. Weatherall that Plaintiffs would seek sanctions if the witnesses and documents were not produced in a timely manner. Mr. Weatherall did not respond to this letter. Wile Aff., ¶ 10.

18. As of the close of fact discovery under the Revised Scheduling Order, Jaeban has produced ***no*** witnesses, a single, seemingly incomplete set of documents, a one-sentence non-responsive statement of damages under D. Del. R. 9.4,[10] and a set of pre-receivership Rule 26(a) disclosures listing the witnesses that Jaeban has refused to produce.

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[8] A copy of Mr. Briggs's letter is attached as Exhibit F.

[9] A copy of Mr. Wile's letter to Mr. Weatherall is attached as Exhibit G.

[10] A copy of Jaeban's Rule 9.4 statement is attached as Exhibit H. In reality, Jaeban did not comply with D Del. R.

The $4,500,000 Cure Amount Held in Escrow Due to Jaeban's Counterclaims

19. On February 24, 2003, Judge Walrath entered the Avis Sale Order under Sections 105(a), 363, and 365 of the Code. The Order approved a sale of most of BRACII's assets to Avis Europe plc.[11]

20. Under the asset purchase agreement, Avis Europe agreed to assume BRACII's agreements with Jaeban. In return, pursuant to Paragraph 13(b) of the Sale Order, Debtors agreed to escrow $4,500,000 as the amount claimed by Jaeban as necessary to cure BRACII's alleged breaches of its agreements with Jaeban in excess of any setoff rights of Debtors.[12] As noted in Plaintiffs' Motion for Partial Summary Judgment, Debtors placed $4,500,000 in an escrow account, where it remains until further action of this Court.

21. Paragraph 13(b) of the Sale Order provides that, if the parties to an "Unresolved Cure Objection" (such as Debtors and Jaeban) are unable to resolve the objection, the Debtors or "the non-debtor objecting party may request that the Court establish a schedule to resolve such objection." By filing this adversary proceeding to recover the £3,000,000 owed by Jaeban, Plaintiffs invoked this provision.

ARGUMENT

22. Jaeban is engaged in a transparent effort to hold the $4,500,000 escrow hostage. Its actions (and inaction) show neither a belief in its claims nor a willingness to obey its

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9.4, which required Jaeban to itemize the unliquidated damages claimed in its pleading. Exhibit H instead merely repeats Mr. Jaeban's claim in Exhibit A, *infra*, that Jaeban's damages do not exceed the $4,500,000 cure amount. Jaeban did serve a document request on December 30, 2003 – prior to Morris Nichols' withdrawal. Plaintiffs have served a written response on and produced documents to Jaeban's English solicitors at Wragge & Co.

[11] A copy of the Avis Sale Order is attached as Exhibit I.

obligations in this Court. The goals of the Bankruptcy Code do not include affording a foreign litigant leverage against the Debtors' estates and their creditors when that litigant repudiates its obligations. Given Jaeban's unwillingness to pay for Delaware counsel, it is safe to assume that monetary sanctions – to be enforced in England – will serve no purpose.

I. Sanctions for Failure to Maintain Delaware Counsel

23. Rule 85.3(d) of the District of Delaware Local Rules requires Jaeban to have Delaware counsel in this proceeding.[13] Failure to obtain Delaware counsel subjects the offending party to sanctions under D. Del. R. 1.3(a). Rule 1.3(a) sanctions include, but are explicitly not limited to, attorney's fees (which would be useless here).

24. The requirement of Delaware counsel is not only mandatory, but especially important where, as here, the litigant and its counsel are located outside of the United States and are unfamiliar with the Court's rules. Moreover, as this case demonstrates, an overseas litigant with assets beyond the reach of this Court is more likely to be indifferent to its obligations to the Court and the other litigants.

25. In keeping with the applicable rules and customary practice, this Court twice directed Jaeban to ensure that it had retained Delaware counsel that would participate in this proceeding. During the December 17, 2003 telephonic status hearing, the Court directed Jaeban to confirm its retention of Delaware counsel by no later than the January 12, 2004 status

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[12] These agreements were submitted to the Court as exhibits to Plaintiffs' Motion for Partial Summary Judgment

[13] Under Bankr. D. Del. Rule 1001-1(b), the Rules of the District of Delaware apply to proceedings in this Court unless they conflict with the provisions of the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure D. Del. R. 85.3(d), however, is explicitly made applicable to this proceeding by Bankr D. Del. R. 9010-1(a).

hearing. At the January 12, 2004 status hearing, the Court directed Jaeban to obtain Delaware counsel by January 30, 2004.[14]

26. Jaeban's indifference to its obligations can be seen it its treatment of Morris Nichols. Jaeban failed to pay the firm's fees and, according to Mr. Briggs' statements at the January 12th hearing, refused even to return phone calls regarding fees or the retention of substitute counsel. *See also* Ex. C. (Motion to Withdraw). Moreover, Jaeban's Birmingham solicitors did not attend the January 12th hearing by telephone, even though Jaeban knew that Delaware counsel had moved to withdraw. This conduct also demonstrates why an award of attorney's fees as a lesser sanction would be pointless.

27. Jaeban's conduct can only be understood as a recognition that its claims are not worth even a minimal investment. To recover an amount in excess of Plaintiffs' claims for £3,000,000 based on BRACII's books and records, Jaeban must show that Debtors could have, but did not, "adequately market the Budget brand" from March 2001 through February 2003 so that Jaeban would have earned over $4,000,000 in additional profits. *See* Answer, Affirmative Defenses and Counterclaims, ¶¶ 37, 44. Given the September 11, 2001 attacks and their effect on airline, car rental, and other travel-related companies, the claim is frivolous.

28. In addition to the awarding sanctions under Del. R. 1.3(a), federal trial courts have "broad authority to . . . dismiss a case for failure to obey pre-trial orders." *Robson v. Hallenbeck*, 81 F.3d 1, 2 (1st Cir. 1996). That authority arises under Rule 41(b) of the Federal Rules of Civil Procedure, but also under the Court's sanctioning powers under Section 105(a) of

[14] In serving Plaintiffs' Motion for Partial Summary Judgment, Plaintiffs notified Jaeban's English solicitors of the Court's direction

the Code, 11 U.S.C. §105(a). *See, e.g., In re Rainbow Magazine, Inc.*, 77 F.3d 278, 284 (9th Cir. 1996); *In re Courtesy Inns, Ltd.*, 40 F.3d 1084, 1089-90 (10th Cir. 1994).

29. By failing either to maintain its existing Delaware counsel or retain substitute counsel, Jaeban has disobeyed the Court and Rule 85.3(d).[15] Jaeban has also violated the Revised Scheduling Order, which certainly presumed that Jaeban would maintain Delaware counsel who would advance the case and attend depositions.

30. There is no remedy for these violations short of dismissing Jaeban's counterclaims. Any sanction (including attorney's fees) that has the practical effect of preserving Jaeban's claims would merely further Jaeban's strategy of delaying distribution of the $4,500,000 escrow to the Debtors' estates and *bona fide* creditors -- without having to expend funds to litigate those claims. Jaeban's counterclaims should be dismissed due to its failure to maintain counsel.[16]

II. Jaeban's Repudiation of the Revised Scheduling Order

31. While Jaeban's failure to maintain Delaware counsel is reason enough for sanctions, its complete disregard of the fact discovery cutoff provides equally ample grounds under Rules 16(f) and 41 of the Federal Rules of Civil Procedure and District of Delaware Local Rule 1.3(a).

32. Under Rule 16(f) of the Federal Rules of Civil Procedure (made applicable to this proceeding by Fed. R. Bankr. P. 7016), failure to obey a discovery scheduling order may,

[15] In *Courtesy Inns*, the Court of Appeals noted that the bankruptcy court "could have applied its local rule to dismiss Courtesy's petition because it had no attorney representative." 40 F.3d at 1090.

[16] Jaeban's misconduct amply justifies an order striking its answer and affirmative defenses as well. If the Motions for Sanctions and Partial Summary Judgment are granted, Plaintiffs *may* be able to protect their rights against Jaeban in England without any need to proceed further in this Court. Plaintiffs reserve all of their rights in his regard.

in the Court's discretion, result in a sanctions order under Fed. R. Civ. P. 37(b)(2)(C) striking the disobedient party's pleadings or entering a judgment by default. District of Delaware Local Rule 1.3(a) sets forth an equally applicable provision authorizing sanctions if a party fails to abide by an order of the Court.

33. Judge Walrath originally set a fact discovery cutoff of December 12, 2003. As a courtesy to Jaeban (and its then-Delaware counsel) in light of the appointment of the Jaeban Receivers on October 20, 2003, Plaintiffs agreed to a six-week extension to January 30, 2004.

34. The discovery deadline has now passed; Jaeban's repudiation of its obligations is now a matter of record. Despite repeated requests by Plaintiffs before and after the withdrawal of Morris Nichols (*see* Wile Aff., ¶ 8 & Exs. E and G), Jaeban has failed to produce a single witness for deposition. It has not produced a single document in response to Plaintiffs' Second Request for Production of Documents. It has not responded to Plaintiffs' concerns that Jaeban's first production of documents was incomplete.

35. The striking of Jaeban's counterclaims is fully consistent with the Third Circuit's six-factor test for striking pleadings as a sanction under Rule 37(b)(2)(C). As first set forth in *Poulis v. State Farm Fire & Cas Co*, 747 F.2d 863 (3d Cir. 1984), these factors are:

a. The noncomplying "*party's* personal *responsibility*."

b. The "*prejudice* to the adversary caused by the failure to meet scheduling orders and respond to discovery;"

c. A "*history* of dilatoriness;"

d. Conduct that was "*willful* or in *bad faith*;"

e. The "effectiveness of . . . *alternative sanctions*;"

f. The "*meritoriousness* of the claim or defense."

Id. at 868 (italics in the original).

36. In *Poulis*, the Third Circuit affirmed the dismissal of a case in which plaintiffs had failed to respond to interrogatories or file a pre-trial statement. Similarly, in *Subar, Inc. v. Precision Plastics, Inc.*, 1997 U.S. Dist. LEXIS 12352 (E.D. Pa. August 14, 1997), the District Court applied the *Poulis* factors to dismiss a counterclaim where, *inter alia*, a corporate defendant failed to obtain new counsel after dismissing its initial counsel.

37. In this instance, all of the *Poulis* factors support striking Jaeban's counterclaims. (a) Jaeban's failure to comply with discovery is its fault and certainly not the fault of its former Delaware counsel. (b) Plaintiffs are prejudiced by the continuing segregation of $4,500,000 of their funds in escrow. (c) Apart from the one, probably incomplete, production of documents, Jaeban has been dilatory in all meaningful respects since the appointment of the Receivers. (d) Jaeban's conduct in refusing to maintain Delaware counsel and cooperate is a bad faith attempt to obtain leverage from the escrow account without any evident belief in its claims or intent to prosecute the action. (e) As noted above, an award of monetary sanctions (or any other sanction that leaves the escrow in place) will be ignored by Jaeban. (f) Jaeban's claim to monies in excess of what it owes to BRACII is utterly implausible; the claim assumes that Jaeban would have enjoyed extraordinary profits during the period in which the September 11th attacks devastated the travel industry.

III. Sanctions Are Necessary to Implement the Terms of the Sale Order

38. Under Paragraph 23 of the Avis Sale Order, the Court retained jurisdiction to "interpret, implement, and enforce the provisions of this Order." *See* Ex. I.

39. By agreeing to participate in the cure process (*see* Exhibit A, *infra*) and by voluntarily submitting to the jurisdiction of this Court when it answered the Complaint, Jaeban warranted that it would cooperate in the cure process and abide by the Court's orders regarding retention of counsel and discovery. By repeatedly violating its obligations, Jaeban has forfeited its right to proceed with its claim to the cure amount held in escrow. This Court has ample authority under Section 105(a) of the Code to take note of these violations, protect the Debtors' estates, and redress Jaeban's abuse of the protections provided by the Sale Order.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order striking Jaeban's Answer, Affirmative Defenses and Counterclaims and granting Plaintiffs such other and further relief as the Court deems just and proper.

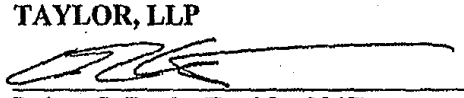
Dated: February 3, 2004

Respectfully submitted,

SIDLEY AUSTIN BROWN & WOOD LLP

Larry J. Nyhan
Kenneth E. Wile
Bank One Plaza
10 South Dearborn Street
Chicago, IL 60603

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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Counsel for Debtors and Debtors-in-Possession
BRAC Group, Inc., et al.

Exhibit A

19-02-2003 16:02 FROM:JAEBAN UK LTD 0121 544 8817 TO:0013025763283 P:1/1

Welcome House
999 Wolverhampton Road
Oldbury West Midlands B69 4RJ
Phone: 0121 544 2219
Fax: 0121 544 8817

jaeban
Self Drive, Contract Hire, Direct Auto Sales

Fax

To:	Robert S Brady - Young Conaway Stargatt & Taylor
Fax:	001 302 576 3283
To:	Larry J Nyhan – Sidley Austin Brown & Wood
Fax:	001 312 853 7036
To:	Suahcel Kirpalani – Milbank, Tweed, Hadley & McCloy
Fax:	001 212 530 5219
To:	Office of the United States Trustee for the District of Delaware
Fax:	001 302 573 6497
To:	Harold Marcus – Brown Rudnick Berlack Israels
Fax:	001 617 856 8201
To:	Simon Freakley – Kroll, Buchler, Phillips
Fax:	0207 029 5001
From:	I M Jaeban (Director) – Jaeban UK Limited
Date:	19th February 2003
Subject:	BRAC GROUP, INC (f/k/a Budget Group, Inc.) et al Case No 02-12152 (MFW)

X Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Dear Sirs,

We refer to our Notice of Objection dated 13th February 2003. It has been suggested by a recipient that our claim could be interpreted as amounting to more than US $4,5 million. We wish to make clear that after set-off we do not consider that our claim amounts to more than US $4.5 million and we therefore seek to have it dealt with through the Cure Process.

Yours faithfully,

I M Jaeban
Director

Exhibit B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re BRAC GROUP, INC. (f/k/a Budget Group, Inc.), et al., Debtors.	Chapter 11 Case No. 02-12152 (MFW) (Jointly Administered)
BRAC GROUP, INC. (f/k/a Budget Group, Inc.), et al., Plaintiffs and Counterclaim Defendants, v. Jaeban (U.K.) Limited, Defendant and Counterclaim Plaintiff.	03-A-54271

COUNTY OF COOK)
) ss.
STATE OF ILLINOIS)

AFFIDAVIT OF KENNETH E. WILE

KENNETH E WILE, being duly sworn, deposes and says:

1. I am a member of the Illinois and New York bars and a counsel in the Chicago office of Sidley Austin Brown & Wood LLP. I am one of the attorneys representing the Debtors in the above-captioned adversary proceeding against Jaeban (UK) Limited ("Jaeban").

2. Between November 3, 2003 and December 17, 2003, on at least three separate occasions, I asked Jaeban's counsel, Thomas Briggs of Morris, Nichols, Arsht & Tunnell, whether he and his firm would continue to represent Jaeban in this proceeding.

3. Prior to the January 12, 2004 status hearing in this proceeding, I asked my Delaware co-counsel at Young, Conaway, Stargatt & Taylor to contact Jaeban's principal solicitor at Wragge & Co., Ian Weatherall, to invite him to participate by telephone at the January 12th hearing.

4. As of the close of fact discovery in this proceeding on January 30, 2004 and as of the date of this affidavit, Jaeban has failed to:

a. Provide any of the documents sought by Plaintiffs' November 26, 2003 Second Requests for Production of Documents;

b. Respond to concerns raised by Plaintiffs in my December 12, 2003 letter regarding gaps in Jaeban's November 2003 production of documents; and

c. Schedule depositions of any Jaeban personnel and the Jaeban Receivers, despite my repeated requests to Plaintiffs' counsel requesting these depositions.

5. Exhibit A to Plaintiffs' Motion for Sanctions (the "Motion") is a true and correct copy of I.M. Jaeban's February 19, 2003 fax to counsel in this Chapter 11 proceeding declaring Jaeban's intention to participate in the cure process.

6. Exhibit C to the Motion is a true and correct copy of the Motion to Withdraw of Morris Nichols Arsht & Tunnel that the Court granted on January 12, 2004.

7. Exhibit D to the Motion is a copy of the transcript of January 12, 2004 hearing.

8. Exhibit E to the Motion is a true and correct copy of my December 12, 2003 letter to Mr. Briggs. As this letter reflects, after discovery commenced, I repeatedly discussed with Mr. Briggs holding the depositions of Jaeban personnel in England.

9. Exhibit F to the Motion is a true and correct copy of Mr. Briggs's December 30, 2003 letter to me.

10. Exhibit G to the Motion is a true and correct copy of a letter that I wrote and caused to be faxed to Ian Weatherall, Jaeban's Birmingham, England solicitor, on January 14, 2004. Mr. Weatherall has not responded to this letter.

11. Exhibit H to the Motion is a true and correct copy of Jaeban's D. Del. R. 9.4 statement which was enclosed with Mr. Briggs's December 30, 2003 letter.

12. Exhibit I to the Motion is a true and correct copy of the Court's February 24, 2003 Order approving the sale of certain of Debtors' assets to Avis Europe plc.

Kenneth E. Wile

Sworn to before me this
2nd day of February, 2004

Notary Public

"OFFICIAL SEAL"
MICHELE ILENE RUIZ
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 4/1/2007

Exhibit C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE: BRAC GROUP, INC. (F/K/A BUDGET GROUP, INC., ET AL.),	)	Chapter 11
Debtors.	)	Case No. 02-12152 (MFW)
IN RE: BRAC GROUP, INC. (F/K/A BUDGET GROUP, INC., ET AL.),	)	(Jointly Administered)
Plaintiffs,	)	
v.	)	Adversary No. A-03-54271
JAEBAN (U.K.) LIMITED,	)	
Defendant.	)	

MOTION TO WITHDRAW

The law firm of Morris, Nichols, Arsht & Tunnell ("Morris Nichols") hereby moves the Court for an Order permitting it to withdraw as counsel for defendant, Jaeban (UK), Ltd. (the "Defendant"). In support of this motion, Morris Nichols states as follows:

1. The grounds for this motion are that the Defendant has failed substantially to fulfill its obligations regarding the firm's services, and has been given reasonable warning that the firm would withdraw unless Defendant's obligations were fulfilled.

2. Morris Nichols has agreed to take all steps necessary to the extent reasonably practicable to protect Defendant's interests, including assisting Defendant in finding other counsel and surrendering papers and property to which the client is entitled.

3. Defendant is represented by Wragge & Co., its counsel in the United Kingdom. Wragge & Co. intends to continue to represent Defendant in connection with this proceeding.

4. Morris Nichols has conferred with counsel for plaintiffs and informed plaintiffs that it will be filing the instant motion.

For the foregoing reasons, Morris Nichols respectfully requests entry of an order in the form attached as Exhibit A permitting it to withdraw as counsel for Defendants.

MORRIS, NICHOLS, ARSHT & TUNNELL

R. Judson Scaggs, Jr. (#2676)
Thomas W. Briggs, Jr. (#4076)
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200

January 7, 2004

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE: BRAC GROUP, INC. (F/K/A BUDGET GROUP, INC., ET AL.),	)	Chapter 11
Debtors.	)	Case No. 02-12152 (MFW)
IN RE: BRAC GROUP, INC. (F/K/A BUDGET GROUP, INC., ET AL.),	)	(Jointly Administered)
Plaintiffs,	)	
v.	)	Adversary No. A-03-54271
JAEBAN (U.K.) LIMITED,	)	
Defendant.	)	

ORDER GRANTING WITHDRAWAL

The law firm of Morris, Nichols, Arsht & Tunnell ("Morris Nichols") having filed a motion to withdraw as counsel for the defendant, and the Court having found good cause therefor;

IT IS HEREBY ORDERED this __ day of _____, 2004, that:

1. Morris Nichols' motion to withdraw is granted;

2. Morris Nichols' appearance on behalf of Defendant is hereby withdrawn.

_____
United States Bankruptcy Judge

Exhibit D

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
Brac Group, Inc.,	.	
Debtor.	.	Bankruptcy #02-12152 (CGC)

Wilmington, DE
January 12, 2004
2:10 p.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE CHARLES G. CASE
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For The Debtor:

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For The Official Committee: of Unsecured Creditors	William P. Bowden, Esq. Ashby & Geddes 222 Delaware Ave.-17th Fl. Wilmington, DE 19899
	Harold J. Marcus, Esq. Brown Rudnick Berlack & Israels One Financial Center Boston, MA 02111
For Cendant Corporation:	Anthony W. Clark, Esq. Skadden Arps Slate Meagher & Flom, LLP One Rodney Square Wilmington, DE 19899
For Ace USA Companies:	Linda M. Carmichael, Esq. White & Williams, LLP 824 N. Market Street-Ste. 902 Wilmington, DE 19801
For Jaeban:	Thomas Briggs, Esq. Morris Nichols Arsht & Tunnell 1201 N. Market st. Wilmington, DE 19899
For U.K. Adminsitrators:	Mark Collins, Esq. Richards Layton & Finger One Rodney Square Wilmington, DE 19801
Audio Operator:	Brandon J. McCarthy
Transcribing Firm:	Writer's Cramp, Inc. 6 Norton Rd. Monmouth Jct., NJ 08852 732-329-0191

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

THE CLERK: All rise. The United States Bankruptcy Court for the District of Delaware is now in session, the Honorable Charles G. Case presiding.

THE COURT: Good afternoon. Please be seated.

MR. MORTON: Good afternoon, Your Honor. Ed Morton from Young Conaway on behalf of the Debtor's, Brac Group, Inc., et al. We'll be going today, Your Honor, by the Amended Notice of Agenda that was forwarded to your Chambers. I'm not sure if Your Honor has a copy. If not I have an extra that I can --

THE COURT: I do.

MR. MORTON: Thank you, Your Honor. As Your Honor will see, the -- probably the first matter that comes numerically on the docket is the Notice of Hearing to Consider the Approval of the Disclosure Statement. There is a status presentation that has been prepared for Your Honor, but since several of the matters in that presentation, not the least of which we'll scheduling, relate also to the Jaeban Status Conference that's at the end. What I would propose to do is to go through the brief uncontested matters we have to the extent there even needs to be a presentation and then take up those matters at the end of the hearing, if that's acceptable.

THE COURT: All right.

MR. MORTON: Thank you, Your Honor. Turning to matters number 10 and 11 on the agenda, these are two motions to which there was no objection and a Certificate of No

Objection had been filed prior to the filing of this agenda. I certainly have forms of order with me to the extent Your Honor has not already signed those motions.

(Pause in proceedings)

THE COURT: You're so far away.

(Laughter)

THE COURT: Every time I come I'm in a different courtroom. I've not signed them. I'm looking -- what I have here is the Order Approving the Rejection of Certain Unexpired Leases --

MR. MORTON: Your Honor --

THE COURT: -- which is not that one.

MR. MORTON: Sir, that relates to matter number 13. We did file a certification late on that one merely because we had given one party additional time to review the motion. That party did not object and therefore it is also uncontested.

THE COURT: Well, if you have other -- hold on -- here's the C.N.O. -- binder. We're talking now about Veronica Nichols, correct?

MR. MORTON: That's correct, Your Honor.

THE COURT: Yes, I do have that.

(Pause in proceedings)

THE COURT: Okay.

MR. MORTON: Your Honor, the next matter would be our 365(d)(4) Extension Motion. Again, that -- there were no

objections filed to that motion and it should be contained in the C.N.O. binder that Your Honor is holding.

(Pause in proceedings)

THE COURT: I've signed the order.

MR. MORTON: Thank you, Your Honor. That brings us to matters 12 and 13. Again, merely because of the objection deadlines related to certain Parties-in-Interest, these matters were the subject of later file certifications. I believe, Your Honor, as you've mentioned that you have the certification on the matter of number 13.

(Pause in proceedings)

THE COURT: Yes, I do.

(Pause in proceedings)

MR. MORTON: Your Honor, matter number 12 is a matter by the Committee. I'll let Mr. Bowden present that.

(Pause in proceedings)

MR. BOWDEN: Your Honor, good afternoon. For the record, Bill Bowden of Ashby & Geddes for the Creditors Committee. Your Honor, just an introductory matter as well, with me at counsel table is Hal Marcus from the Brown Rudnick Berlack Israels firm, as well. Your Honor, item 12 was the Committee's Application to Supplement the Engagement of Linda Burch. No objections were filed and served. Ms. Harrison on behalf of the United States Trustee had asked for an extension of time, which obviously we had no problem giving her, and has

not objected. We filed a Certification of Counsel last Wednesday, I believe. I don't know if it made it into the C.N.O. binder or not. If not, Your Honor, assuming Your Honor has no questions, I have a Form of Order with me.

THE COURT: I did not see it in the C.N.O. binder.

MR. BOWDEN: Your Honor, may I approach with the Form of Order?

THE COURT: Yes, please.

MR. BOWDEN: Thank you.

(Pause in proceedings)

THE COURT: I've signed the order.

MR. BOWDEN: Thank you, Your Honor.

(Pause in proceedings)

MR. MORTON: Your Honor, I believe then this would be an appropriate time to circle back to the disclosure statements portion of the hearing. Mr. Nyhan of the Sidley Austin Brown & Wood firm is here to present that matter.

(Pause in proceedings)

MR. NYHAN: Good afternoon, Your Honor.

THE COURT: Hello Mr. Nyhan. Nice to see you.

MR. NYHAN: Nice to see you. It's a pleasure to be in front of Your Honor again, all though I must confess that the ambient climate has deteriorated significantly since the last hearing I attended.

THE COURT: I just assumed that you waited until the

weather was like Chicago before you came to Delaware.

(Laughter)

MR. NYHAN: Your Honor, but for the urgence of the Committee, I'd be more than happy to do that.

(Laughter)

MR. NYHAN: Your Honor, what we'd like to do today, if it's acceptable to the Court is provide a brief overview of where we have been and where we are going with this case and then suggest a timetable for getting to disclosure and ultimately confirmation. And then briefly address -- excuse me, the objections that have been filed, how we intend to address those, recognizing that we are not asking the Court to rule on any objections today, but rather will request that the disclosure statement hearing itself be adjourned and that it be taken up in a -- in a few weeks.

(Pause in proceedings)

THE COURT: Please proceed.

MR. NYHAN: Thank you, Your Honor. This case, Your Honor, was filed on July 29th of 2002. Shortly -- actually prior to the initiation of the case, the company's -- Budget Rent-A-Car had engaged investment bankers and embarked upon a program to either find a source of capital in order to effect an internal reorganization or alternatively to find a buyer so that the assets could be monetized for the benefit of the Creditors of the company. Prior to the filing, Budget had

progressed significantly in sale negotiations with Cendant Corporation in an acquisition subsidiary called Cherokee. And after the Petition was filed, and after financing was put in place, pursued essentially an auction based upon a stalking horse bid promoted by Cendant and Cherokee. Cendant and Cherokee agreed to purchase -- to acquire all of Budget's operations in the United States, Canada, the Caribbean, Latin America and Asia Pacific. As the deal was ultimately structured, Cherokee and Cendant agreed to assume $2.8 billion of Fleet debt, about $420,000,000 of Secured Pre-Petition bank debt, $75,000,000 in Debtor-in-Possession financing, substantially all trade claims, employee claims, tort claims -- there is a dispute, I don't mean to suggest that there isn't a dispute is to the scope of that assumption, but in general, operating liabilities of the company were assumed. In addition, Cendant agreed to pay and did in fact pay $110,000,000 in cash, plus an additional $40,000,000 in transaction costs, that is, they agreed to help the company defray approximately $40,000,000 in transaction costs. And they assumed over 7,000 executory contracts. That transaction, Your Honor, was approved by Judge Walrath and closed on November 22 of '02. Cendant did not acquire the operations of Budget, which are commonly referred to -- or were referred to as E.M.E.A. or Europe, Middle East, Africa and parts of Asia. Those operations continued subsequent to the closing. As part

of the transaction with Cendant, a license was negotiated pursuant to which the Budget Estate was entitled to continue using the Budget trademark and trade name in those regions for a significant period of time. We then embarked upon a program to either devise an internal reorganization for E.M.E.A. or find a buyer. Creditor pressure in Europe forced us to take the step of initiating in January of 1903 -- 1903 -- 2003, in administration in the High Court in London for BRAC, that's Budget Rent-A-Car International. BRAC is a U.S. corporation, but was the international holding company for the Budget Group. And as such, owned the stock of the various corporations that carried on business throughout, in the U.K. throughout Europe, throughout E.M.E.A. Working together with the Administrator, Simon Freekley and Urpul Sind, who were appointed by the High Court as Administrators in the administration of BRAC and with the Creditors Committee, we jointly negotiated a sale of the European operations to Avis Europe. That transaction was ultimately approved by this Court, by the Administrators. It called for the acquisition of the operating assets in Europe, as well as the licensing agreement for 20 mile -- excuse me -- $20,000,000 cash U.S., plus the assumption of considerable amount of liabilities. That sale was approved in late February of '02 -- excuse me -- '03, Your Honor. After closing the Avis Europe sale transaction, the parties focused on bringing a conclusion to the case, and in particular a Plan of

Reorganization. The principal issue -- there are some litigation issues, for example, there is a significant claim against the Sixth company in Germany, known as the Sixth Litigation. That has been prosecuted in Germany and sustained a judgment against the Sixth and we're in the appeal process at this point. But by and large the assets of the Budget Group -- or what was formerly known as the Budget Group, have now been monetized and the principal issues preventing the filing and consummation of a plan, have been the issue of allocating the value that's been received in these transactions as between, on the one hand, the U.S. Creditor Body, and on the other, the Administrators representing the interests of the U.K. Creditors. Settling those issues prove more difficult than people had originally expected. They are complicated, for example, the allocation of purchase price is in dispute, both with respect to the Cendant transaction and in that respect, because the -- part of the operations acquired by Cendant, specifically Latin America and Australia, were owned by BRAC and therefore, the value allocable to those, that portion of the sale is claimed by the BRAC Estate. Conversely, the license which BRAC enjoyed for international operations was owned by the U.S. Budget -- BRAC Estate and therefore, the Creditors in the U.S. laid claim to some portion of the value paid by Avis Europe in respect of the sale of E.M.E.A. There was also significant in our company claims between the Estates,

questions about how much of the post-petition financing, which was supported on the backs largely of US Creditors, should have been borne by the UK and the BRAC Estate, and then finally, disputes over who was entitled to whatever value was realized from the Sixth Litigation. As Your Honor is aware, the Disclosure Statement and Plan that we filed left those issues unresolved with the expectation and hope that there would be a resolution between the Administrator and the US Creditors Committee and I'm happy to report to the Court today that as of the end of last week, an agreement has in fact been reached and at the conclusion of my comments, I will yield the podium to Counsel for the Administrator, Mr. Collins and Counsel for the Committee, Mr. Marcus to brief the Court on the salient features of that settlement. But suffice it to say that the principal obstacle, at least from our perspective, of moving forward with this Plan has now been resolved. We will of course, Your Honor, amend the Plan and Disclosure Statement to reflect the terms of the settlement. It is our understanding that the Committee and the Administrator have agreed or that the settlement should proceed to hearing with dispatch and therefore, before I turn to the objections that have been raised at the Disclosure Statement and put it in context for the Court, what we will request at the conclusion of today's hearing is that we be given a time line along the following lines. It is our expectation that a Motion to Approve the

settlement will be filed on Wednesday or Thursday of this week. We also fully expect that we will be in a position to file an Amended Disclosure Statement with some technical amendments to the Plan by July -- excuse me -- January 25th. Those amendments, we think, will in substantial part, resolve the objections that are pending against the Disclosure Statement. And we would request, subject obviously to the Court's availability, that we be provided with a hearing in early February, preferably around the 4th or 5th of February, to consider both the adequacy of the disclosure and the propriety of the settlement that has been negotiated involving the allocation issues. If I may, Your Honor, what I would propose to briefly discuss the nature of the objections that are -- have been filed and how we propose to resolve them to help fill in the context for the time line that I've requested.

(Pause in proceedings)

MR. NYHAN: Your Honor, we have prepared a brief summary -- that is the Debtors have prepared a brief summary sheet which reflects our summary of what the different objections contained and include as exhibits, all of the objections as well as the Plan and Disclosure Statement. If I may approach it may be helpful to the Court?

THE COURT: Thank you.

(Pause in proceedings)

MR. NYHAN: The summary page, Your Honor, should be

the first page in the binder and I would propose simply to walk through the principal objections in order. Your Honor will note, we have divided the responses into Roman number I, Objections and then on the second page Roman number II, Responses. I don't intend to spend much time on the second category because those are principally letters that had been received. They have not been filed with the Court. We will -- we do propose to file all of them with the Court and we are going to respond with correspondence to these individuals. The vast majority of the letters really identify claims that these individuals are asserting against the Estate, rather than dealing with anything having to do with the objection -- excuse me -- adequacy of disclosure. We intend to determine whether their claims have in fact been scheduled and if not inform them. But if they have been inform them of that, if they have not inform them of that fact, as well as the bar date and the purpose of the Disclosure Statement hearing. I would like to direct my -- but each one of those letters is included in the binder for the Court to review if Your Honor wishes to.

(Pause in proceedings)

MR. NYHAN: Let me turn then, if I might, to the first objection, which is the objection lodged by the Commonwealth of Pennsylvania and it's a fairly straightforward objection. The Commonwealth asserts what we understand to be a priority tax claim. Their objection challenges the failure to -- or the --

their interpretation of the Plan, that the penalty associated with that claim will not be paid under the Plan. Your Honor, we intend to deal with that objection two ways. First, it's really a Plan objection, it's not a Disclosure Statement objection. But second, we are going to clarify the Plan to the extent that they intend to assert a penalty as a non-priority claim. We are going to make it clear that any objection to the allowability of that claim will be handled in the claim objection process and will be -- not be foreclosed -- excuse me -- by the Plan.

(Pause in proceedings)

MR. NYHAN: The second set of objections were lodged by the Insurance Company of North America. This is an insurance company who believes, we think, that they have insurance policies -- extant insurance policies and have questioned the treatment of their insurance policies under the Plan. They have also raised general disclosure objections. We're a little bit puzzled about this particular claim, Your Honor. We have reviewed our records -- or I should say are in the process of reviewing them. We do know that this is -- we did have policies for calendar years 1987 through 1992 with this insurance company. These policies were primarily for workman's comp and auto liability claims-made policies. They involved upfront premiums and retrospective premiums. According to our records, the last policy year expired in 1993

and we paid what we understood to be a final retrospective premium in 2002 and obtained a release of a letter of credit. So we do not understand that this insurance company is a Creditor or that we have any continuing relationship with them, but we do intend to get to the bottom of this when their counsel can provide us with additional information. And if, and to the extent a policy remains live, we will deal with that appropriately through either the schedule of assumed contracts or reflecting the fact that we are not assuming the agreement. We'll simply get to the bottom of it.

(Pause in proceedings)

MR. NYHAN: The third objection, Your Honor, is from the Paella Properties Group. Their objection is fairly straightforward. Under the Plan, the North American -- the U.S. Estates are to be substantively consolidated and they have, Paella has requested further disclosure concerning facts that are relevant to substantive consolidation. We do intend to amend the Disclosure Statement to add additional information, but we have also provided to counsel to Paella all the information that he has requested that is in our custody and we will continue to cooperate with them pending the further hearing on this. Hopefully we can resolve this objection completely.

THE COURT: All right.

MR. NYHAN: The final objection, Your Honor, is filed

by Cendant and Cherokee. And that -- there are several components of that. The first is that the Disclosure Statement fails to adequately address litigation that is pending between the Estate and Cherokee. That litigation involves a number of issues, one of which is Cendant's claim or -- excuse me -- Cherokee's claim that they are owed roughly $3.6 million as an administrative priority claim. We agree that's an issue. We will amend our disclosure to fully disclose the fact of the litigation and the issues that are involved. They've also objected that we have not discussed the litigation in so far as it pertains to the dispute between the Estate and Cherokee over who has responsibility for a number of personal injury claims and a number of employee-related liability claims. The litigation that -- in that litigation, the Debtors maintain that Cherokee assumed most of these obligations in connection with their acquisition of the North American operations. Cherokee in turn has denied that they've assumed them, or at least assumed all of them and obviously that litigation will proceed in its normal course. The issue for disclosure, we think, is to number 1, make clear to all the Creditors in the Estate the fact and contours of the litigation and second to make clear to those persons who may be Personal Injury Claimants that there is a dispute, that what their treatment -- - their actual treatment at the end of the day will turn or may turn on the resolution of that dispute and that to the extent

that Cherokee disputes the assumption of a particular personal injury claim or employee liability claim, we will make it clear that those Creditors will be asked to vote in the Class of General Unsecured Creditors. So, we believe that we can adequately resolve these objections -- that portion of the objections through improved disclosure. The next point raised by Cherokee is the suggestion that the Plan as drafted imposes upon Cherokee a third-party release, that is, imposes upon Cherokee a release of claims in favor of third-parties. That was not our intent and we will clarify the Plan accordingly. Similarly, Cherokee has -- contends that the Plan as presently drafted affects a discharge of Cherokee's claims under the Asset Purchase Agreement. Again, that was not the intent and I'm sure that we can come up with language which will satisfy them that that is not the effect of the Plan. Cherokee and Cendant also claim that the plan can not be confirmed because they -- their administrative priority claim, 3.6 million may be greater than that. They assert that the Plan contemplates that that claim will be estimated and that it can not as a matter of law be estimated. And we would propose to modify the Plan and Disclosure Statement to reflect the fact that their objection to an estimation is preserved, that is confirmation the Plan will not preclude them from arguing that if we ever decide that it is appropriate to try to estimate a claim. Hopefully we'll never get there. And finally, Cherokee --

THE COURT: What does their proposed or alleged administrative priority claim arise out of?

MR. NYHAN: It arises out of certain obligations under the Asset Purchase Agreement, which Cherokee believes the Estates should have borne and Cherokee paid those obligations. So they believe that in effect it -- without getting technical on the contract itself, I would liken it to -- an adjustment to the purchase price. Incidentally, Your Honor, the Debtors have asserted in that litigation that Cherokee owes the Estate a number slightly in excess of $2,000,000, I believe. So that litigation is fairly right, but at least in terms of the identification of the issues.

(Pause in proceedings)

MR. NYHAN: The final point raised by Cherokee is a request or demand that their -- the disputed claim reserve for their administrative claim be segregated separately from other disputed claim reserves. While we don't think they're entitled to that, we don't have any problem providing for that. So we will amend the Plan accordingly. Again, Your Honor, I'm not -- it's not my expectation that we're going to argue these or that Your Honor will resolve any of these. We do, though, believe that the vast majority of the objections that have been filed will be resolved by the amendments that I've suggested both to the Plan and the Disclosure Statement. With that, Your Honor, I would respond to whatever questions the Court might have and

then subject to identifying a schedule, turn the podium over to the Committee and the Administrator and to the extent Your Honor would be interested in the terms of the settlement that they've reached.

THE COURT: All right, thank you.

(Pause in proceedings)

MR. MARCUS: Good afternoon, Your Honor. Harold Marcus from Brown Rudnick Berlack & Israels on behalf of the Creditors Committee. We'd like to summarize, if I could, somewhat general terms of the settlement that has been reached between the U.K. Administrators and the U.S. Creditors Committee of Budget. Basically the terms are as follows: The Cendant sale proceeds will be allocated 100% to the U.S. Estates. The Avis Europe sale proceeds will be allocated 100% to the BRAC Estate. The first million dollars of what we refer to as Jaeban cure proceeds, which return to the Estates will be in fact allocated to the U.S. Estates with a balance of the roughly $4.5 million cure account allocated to the BRAC Estate. The Sixth Litigation proceeds that Mr. Nyhan referred to a few minutes ago will be allocated as follows: The first million dollars to the BRAC Estate, with the balance shared 50/50 between the U.S. and BRAC Estates. The U.K. Administrators, however, will have sole authority to settle or resolve the Sixth Litigation. In addition, certain accrued and unpaid professional fees will be shared by the Estates. Roughly

$3,000,000 of U.S. administrative expense and priority claims will be paid by the BRAC Estate. These relate, Your Honor, to the period of time subsequent to the filing of the U.S. bankruptcy case of BRAC and prior to the commencement of the U.K. administration case for BRAC. And finally there is a waiver of claims binding against these Estates -- mutual releases that will be entered into. So, the Creditor's Committee, Your Honor, is indeed pleased that the parties have reached a settlement. We do anticipate filing as quickly as we can this week, a Motion to Approve the settlement. I might add, Mr. Nyhan remarked at the very beginning of the hearing that the Committee is pushing on the Debtor to keep things moving. Indeed the Committee is concerned about the cost of keeping this liquidation case operating, so to speak. There is a huge cost factor. We're very supportive of having as early a disclosure -- substantive Disclosure Statement hearing and Plan confirmation if possible. I hope the Court will keep that in mind as we discuss the specific dates that Mr. Nyhan has proposed. I certainly appreciate and understand the logic of the proposed dates. There is still a few items to deal with before we have that substantive hearing, but nonetheless we do need to move this case on. Thank you.

THE COURT: Thank you. Anybody else?

(Pause in proceedings)

MR. CLARK: Good afternoon, Your Honor. Tony Clark of

Skadden Arps for Cendant and Cherokee acquisition. Just briefly, I'm not going to argue, our objection has been filed. I do want to state for the record that the summary, and I understand what Mr. Nyhan was giving was just a summary and not a verbatim explanation of what our objection is, but the summary doesn't include everything that's in our objection, but I assume we'll talk about it more and deal with it further before we come before Your Honor for a substantive hearing on the Disclosure Statement. So I'm just going to reserve our rights.

THE COURT: Thank you.

MR. CLARK: Thank you, Your Honor.

(Pause in proceedings)

MS. HARRISON: Good afternoon, Your Honor. Margaret Harrison, Office of the United States Trustee. I had been granted an extension of time to object to the Disclosure Statement until the settlement had been reached and the modifications had been made. So I just wanted to preserve my rights to object to the Disclosure Statement as modified.

THE COURT: Thank you.

MR. NYHAN: I concur with both of those, Your Honor. Your Honor, I should note that in proposing the date that I did, I recognize that we do have an Omnibus Hearing scheduled for February 17th here and that if we depart from that -- if it's possible to depart from that, it may be necessary to

proceed with a hearing in a different venue and if the parties are all prepared to do that if that is something that works for Your Honor.

THE COURT: The answer is I don't know. That's what I've been typing up here while you all have been talking. I've been making some inquiries. And frankly, what I would like to understand is what difference the two weeks makes? I had this conversation with some folks in another case recently and I know their answer was $15,000,000 or something like that and so that had a -- made an impression on me because of the burn rate of that particular debtor. But, it is -- it is difficult to schedule Delaware cases in Arizona competing with the Delaware -- excuse me, with the Arizona docket, which in the last few months has become more crowded than it has been in a while. Perhaps, since the time that you were in Arizona on a regular basis, Mr. Nyhan, when it was quite crowded. So, I do want to ask the question every time, to have counsel tell me why is it -- why does the two weeks matter? Because when I'm here I can give you my full attention and not worry about the fact that you may be bumping up against something else that I've already scheduled or without having to make other kinds of arrangements.

MR. NYHAN: I appreciate that, Your Honor. Let me turn that over to the Committee, but say that two -- make two comments. First, certainly it is not our expectation that were

we to depart from our normal practice for purposes of this one hearing, which we don't expect to be an evidentiary hearing or a lengthy hearing for that matter, that we would not -- we would depart only for purposes of that hearing in order to move more quickly to confirmation, with every expectation that confirmation would be here when Your Honor is available. Second, I will say that the Committee has endeavored to move this case forward. Let me state it differently. All parties have moved -- endeavored to move the case forward. There have been many issues that people have had to grapple with in order to move it across the goal line. But the Committee has been sensitive to the delay and has been consistent in their request that things move forward and we will do whatever we can -- we -- the Debtor, to accommodate their desire to get it there.

MR. MARCUS: The specific answer, Your Honor, is that the two weeks could mean, you know, as much as $600,000 or $700,000 just based upon the burn rate of professional fees running roughly 1-2, 1-3 a month. Now granted some of that consisted of litigation preparation and we now have a proposed settlement with the U.K. Administrators. However, there's still the Cendant issues that are outstanding including litigation -- potential litigation and certainly negotiations and work on the Cendant matters. It's not -- I can't tell you it's $15,000,000. On the other hand, for this Committee, with -- in a case where of course there's no operating business,

just a pot of money that's dissipating, the two weeks strike, the Committee as extremely significant.

THE COURT: But on the other hand, the fact that there are two more weeks doesn't mean that every professional has to write down another 8.0 on their sheet everyday. Presumably, some of the professionals who are paid on a monthly basis, the financial professionals -- are their financial professionals who are still being paid on a monthly basis in this case?

MR. MARCUS: There have been yes, Your Honor. I --

THE COURT: Are there still at this point is what I'm saying?

MR. NYHAN: Well not for the Debtor, Your Honor.

MR. MARCUS: Jefferies of -- the financial advisor for the Committee has been paid thusly, but won't be going forward.

THE COURT: So, just to follow up on the analogy of the other case, I mean, there was an actual 3/4 of a million dollars a day operating burn rate that was creating, you know, over 21 days, a $15,000,000 loss. That was a significant issue. But, it doesn't sound like that's really happening in this case.

MR. MARCUS: No, this is a different situation, Your Honor. But, the fees have been -- have been significant in the context -- moreover the context includes, you know, I'd say months of negotiations and it's taken a long and hard road to get to this point, Your Honor. We certainly would like to do

everything we can to, you know, keep up the momentum and get these matters resolved as quickly as we can, subject to your calendar and schedule. Thank you.

THE COURT: Okay. Right, so you do have a full fledged schedule proposal, Mr. Nyhan?

(Pause in proceedings)

MR. NYHAN: Well, Your Honor, I have one, it's a question of which piece of paper I have it on. Your Honor, we were not contemplating going beyond the scheduling a hearing for the approval of disclosure and approval of the settlement motion that will be filed within the next couple of days. So our proposal would be to schedule a hearing during the week around the 4th, 5th or 6th of February with a view towards -- we are told by the Committee and the Administrator that the settlement motion can be filed or will be filed by Wednesday or Thursday of this week. Assuming a 20 day notice period on that motion, a hearing in -- during that first week of February -- perhaps the second week of February would be adequate. We will be in a position to file an Amended Plan and Disclosure Statement addressing the changes that I alluded to earlier by the 25th of January, so parties will have ample opportunity to look at that before the resumed hearing. With respect to confirmation, we would hold off on any request until we conclude the hearing on the approval of the Disclosure Statement.

THE COURT: Well, I know that the 5th and 6th are not possible. The 4th may be possible. I just don't know what my calendar is in Arizona, that's why I've sent an e-mail to see if I can find out. The 5th I'm traveling and the 6th I'm out of the state. Then but I'm back the next week, the week of the 9th and then the week of the 16th is when I'm here. I can't commit to give you the 4th until I get a response --

MR. NYHAN: Understood, Your Honor.

THE COURT: -- and if -- I understand that the issue is you'd like to do this as quickly as possible. That is a fairly aggressive schedule in the sense that -- I take it it assumes that you are going to resolve all of the outstanding objections, the most significant one appears to be the Cendant objection. But resolve it from the standpoint of disclosure, not from the standpoint of actually resolving the underlying merits.

MR. NYHAN: That is correct, Your Honor.

THE COURT: And then deal with whatever issues may be raised by the United States Trustee once the Amended Disclosure Statement is in place. So, I wish I could give you a more definitive answer than that. If we kick over into the next week, the first available time is during the week of the 9th. Should we try to find it during the week of the 9th and come to Arizona or should we just wait until the 16th? My goal is to be as accommodating as possible, but I must tell you then that

I've had a couple of weeks recently where the bulk of my time in Arizona has been spent on Delaware cases and has created a real serious problem in terms of actually doing my real job, which is the 3,000 cases I have in Arizona.

(Laughter)

THE COURT: And so I'm sensitive to that and any -- and frankly, what that means is that if something goes haywire where I have something that an emergency comes up or if there is a hearing that goes too long, I'll give precedence to that over the Delaware cases and then meanwhile we've had a bunch of counsel who've traveled who are there and if we can't fit it in that day or if we have to wait until the next day, it ends up not necessarily being that good. This is not an ideal situation, obviously and would be better, as much fun as I have here, for Congress to create some more judgeships so that we don't have to do this. But it's the reality that we're all dealing with.

MR. NYHAN: Your Honor, if I may have an opportunity to confer with the Committee.

THE COURT: All right.

(Pause in proceedings)

MR. MARCUS: Your Honor, we would like to shoot for the 4th, if your schedule permits once you hear back from your Court. The second choice would be to have the hearing on the 9th if your schedule permits. And we do believe each week is